

**LEVIN-EPSTEIN & ASSOCIATES, P.C.**

---

60 East 42<sup>nd</sup> Street • Suite 4700 • New York, New York 10165  
T: 212.792-0048 • E: [Jason@levinepstein.com](mailto:Jason@levinepstein.com)

October 27, 2022

**VIA ECF**

The Honorable Jesse M. Furman, U.S.D.J.  
U.S. District Court, Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *Shapiro v. Trihop 14th Street LLC (d/b/a IHOP) et al*  
**Case No.: 1:22-cv-05022-JMF**

Dear Honorable Judge Furman:

This law firm represents Plaintiff Angel Shapiro (the “Plaintiff”) in the above-referenced matter.

Pursuant to Your Honor’s Individual Motion Practice Rules 1(B), this letter respectfully serves to respond to Your Honor’s October 20, 2022 Order to Show Cause [Dckt. No. 36].

On September 7, 2022, Your Honor entered a briefing schedule on Defendants’ motion to dismiss Plaintiff’s initial complaint (the “Motion to Dismiss”). [See Dckt. No. 26]. The September 7, 2022 Order provided, in pertinent part, as follows:

“If no amended complaint is filed, Plaintiff shall file any opposition to the motion to dismiss by September 27, 2022...Defendants' reply, if any, shall be filed by October 4, 2022.”

[Dckt. No. 26].

Plaintiff filed an amended complaint on September 28, 2022 [Dckt. No. 31] (the “Amended Complaint”).

In response to the filing of Plaintiff’s Amended Complaint, on October 3, 2022, Defendants Trihop 14th Street LLC (a/k/a IHOP) and Edward Scannapieco (together, the “Defendants”) filed a letter [Dckt. No. 35] (the “October 3<sup>rd</sup> Letter”). Defendants’ October 3<sup>rd</sup> Letter contains:

1. A representation of Defendants’ intention to rely on their previously filed Motion to Dismiss [*id.* at p. 2 ¶ 2];
2. Additional legal arguments that Defendants’ did not include in their previously filed Motion to Dismiss [*id.* at p. 2 ¶ 5]; and
3. A request for permission to file *a second motion to dismiss*, as against individual defendant Edward Scannapieco [*id.* at p. 3 ¶ 1].

[See *id.*].

Thus, Defendants' October 3<sup>rd</sup> Letter contained conflicting representations, and was filed in derogation of this Court's Local Civil Rules ("LCR"). [See S.D.N.Y. LCR 7.1 (2013 Committee Note) ("[LCR]... 7.1(d) is not intended to expand the types of motions that can be made by letter-motion. For example, motions to dismiss...*may not be made by letter-motion* ") (emphasis added).

Defendants' additional arguments in the October 3<sup>rd</sup> Letter [*id.* at p. 2 ¶ 5], and the request for permission to file a ***second motion to dismiss*** [*id.* at p. 3 ¶ 1], led the undersigned counsel to reasonably believe that the Court would issue a briefing schedule on Defendants' anticipated, second motion to dismiss the Amended Complaint.

It is respectfully requested that the Court proceed in one of two ways:

1. Strike Defendants' additional legal arguments in the October 3<sup>rd</sup> Letter, in response to the Amended Complaint, not previously included in the Motion to Dismiss, deny Defendants' request for permission to file a ***second motion to dismiss***, and schedule a briefing schedule on the pending Motion to Dismiss; or
2. Strike Defendants' additional legal arguments in the October 3<sup>rd</sup> Letter, in response to the Amended Complaint, not previously included in the Motion to Dismiss, and grant Defendants' permission to file a second motion to dismiss in response to the Amended Complaint, with a briefing schedule to be set thereafter pursuant to LCR 6.1(b).

Thank you, in advance, for your time and attention to this matter.

Respectfully submitted,

LEVIN-EPSTEIN & ASSOCIATES, P.C.

By: /s/ Jason Mizrahi

Jason Mizrahi, Esq.

60 East 42<sup>nd</sup> Street, Suite 4700

New York, New York 10165

Tel. No.: (212) 792-0048

Email: [Jason@levinepstein.com](mailto:Jason@levinepstein.com)

*Attorneys for Plaintiff*

VIA ECF: All Counsel